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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,544	01/28/2005	William H. Simon	Simon-1	7885

29439 7590 03/31/2009
GUERRY LEONARD GRUNE
784 S VILLIER CT.
VIRGINIA BEACH, VA 23452



EXAMINER
ARAJ, MICHAEL J

ART UNIT	PAPER NUMBER
3775	

MAIL DATE	DELIVERY MODE
03/31/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



Office Action Summary

JUL 31 2009 PTO-326 (Rev. 08-06)	Application No.	Applicant(s)
	10/525,544	SIMON, WILLIAM H.
	Examiner	Art Unit
	MICHAEL J. ARAJ	3775

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 16 January 2009.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-9 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
10) The drawing(s) filed on 28 January 2005 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of claims 2-9 in the reply filed on January 16, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 10-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on January 16, 2009.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figures 1 and 2 have lines, numbers, and letters not uniformly thin and well defined, clean or durable. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Perry (U.S. Patent No. 5,766,174).

Perry discloses an intramedullary nail (20) having a proximal end, a distal end and a central elongated body where said device comprises an attaching means to a bone. Said intramedullary nail is cannulated comprising a round cross-section (64) with a central elongated body. The intramedullary nail is adapted with said attaching means by way of a proximal fastener hole (32a) and a distal fastener hole (36b) where a fastener is inserted into at least one of the fastener holes. Said fastener is configured and dimensioned for insertion in at least one of said fastener holes, further comprising a threaded hole for insertion of a screw. With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Perry which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference “teach” what the subject patent teaches, but rather it is only necessary that the claims under attack “read on” something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be

employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/

Examiner, Art Unit 3775

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733



Notice of References Cited		Application/Control No.	Applicant(s)/Patent Under Reexamination	
		10/525,544	SIMON, WILLIAM H.	
Examiner MICHAEL J. ARAJ		Art Unit 3775	Page 1 of 1	

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name <i>hole w/in taper</i>	Classification
*	A	US-5,505,734	04-1996	Caniggia et al. <i>SLOT + TAPER + SPRING</i>	606/63
*	B	US-2003/0097131	05-2003	Schon et al.	606/62
*	C	US-5,766,174	06-1998	Perry, Clayton R. <i>J</i>	606/62
*	D	US-2,614,559	10-1952	LIVINGSTON HERMAN H <i>flat shape IM BAR</i>	606/64
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



Index of Claims

**Application/Control No.**

10525544

Applicant(s)/Patent Under Reexamination

SIMON, WILLLIAM H.

Examiner

MICHAEL J ARAJ

Art Unit

3775

✓	Rejected
-	Cancelled
=	Allowed

÷	Restricted
=	Allowed

N	Non-Elected
I	Interference

A	Appeal
O	Objected

 Claims renumbered in the same order as presented by applicant CPA T.D. R.1.47

CLAIM		DATE									
Final	Original	01/04/2009	03/26/2009								
	1	+	✓								
	2	+	✓								
	3	+	✓								
	4	+	✓								
	5	+	✓								
	6	+	✓								
	7	+	✓								
	8	+	✓								
	9	+	✓								
	10	+	N								
	11	+	N								
	12	+	N								
	13	+	N								
	14	+	N								
	15	+	N								
	16	+	N								
	17	+	N								
	18	+	N								
	19	+	N								
	20	+	N								

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	10525544	SIMON, WILLLIAM H.
	Examiner	Art Unit
	MICHAEL J ARAJ	3775

SEARCHED

Class	Subclass	Date	Examiner
606	62-64	3/26/2009	MJA
623	21.11-21.19	3/26/2009	MJA

SEARCH NOTES

Search Notes	Date	Examiner

INTERFERENCE SEARCH

Class	Subclass	Date	Examiner

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